

Amendment and Response

U.S. Serial No. 10/528,006

Page 8

Amendments to the Drawings

The attached replacement sheets replace the originally filed drawing sheets containing Figures 1-6 and Exhibits A and B. The replacement sheets contain the desired changes made to the drawings. The amended drawings are in full compliance with 37 C.F.R. § 1.84. No new matter is introduced. Pursuant to 37 C.F.R. § 1.121(d), each drawing sheet submitted is labeled in the top margin as "Replacement Sheet."

Attachment: Replacement Sheets

REMARKS

In all instances the trademark was put in caps with the indication “electronically charged filter” added where appropriate.

Claims 1 through 27 remain in this case and new independent claims 28 and 29 have been added to more fully protect applicants invention.

The examiner has again rejected claims 1 and 9 under 35 U.S.C. 102 based on U.S. Patent 4,951,664 to Niemeyer. The examiner’s main contention with regard to the reference (see office action page 4) is:

Regarding the limitation of providing an air path therethrough, gasket (30) allows air to be forced out of or absorbed into the gasket (30) during compression and expansion. (Column 5, Lines 1-6). Further, regarding the additional material (32) covering the gasket (30), Niemeyer discloses the material is impermeable to particles as small as 5 microns. (Column 5, Lines 7-28). As such, it is understood that air may pass through this material as air has a smaller particle size than 5 microns.

Applicant has amended claims 1 and 9 and has included in new claims 28 and 29 the limitation that the “filtering material on said periphery of said facemask” is “breathable.” This language is a return to the language of the original claims 1 and 9. While it is asserted that “air may pass through this material” (additional material 32) “as air has a smaller particle size than 5 microns” this would merely be leakage and not a sufficient amount of air for breathing. In the context of a face mask breathable requires that the air path allows air for breathing there through.

In the Niemeyer reference the purpose of additional material 32 is to provide a seal. The material 32 is “impermeable” to particles it is trying to filter, not breathable so as to provide an air path. The air that may pass through is leakage and the material 32 is not breathable.

Amendment and Response

U.S. Serial No. 10/528,006

Page 10

Certainly a teaching to seal a material as much as possible is not a teaching to have a breathable material. It is submitted that these claims are not obvious in light of the Niemeyer reference which teaches the exact opposite of the claimed invention.

It is submitted that claims 1, 9, 28 and 29 are allowable over the reference and such allowance is respectfully requested.

The remaining claims have been rejected under 35 U.S.C. 103 in light of various combinations of references using Niemeryer as the basic reference. Since all of the remaining claims are dependant on either claim 1 or 9 it is believed they are likewise allowable.

Amendment and Response

U.S. Serial No. 10/528,006

Page 11

CONCLUSION

In light of the foregoing, Applicant respectfully submits that all rejections have been overcome and that the pending claims are in condition for allowance.

Applicants believe that no fees are necessitated by the present Amendment. However, in the event that any fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 06-0923.

If the Examiner believes that a telephone conversation with Applicant's attorney would expedite allowance of this application, the Examiner is cordially invited to telephone the undersigned attorney at the number provided below.

Date: November 19, 2008

Respectfully submitted for Applicant,

Richard I. Samuel (Reg. 24,435)
Attorney for Applicant
Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Tel. No. (212) 459-7021
Fax No. (212) 355-3333